

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

(SUO MOTU) CONTEMPT PETITION NO. 161 OF 2003

The 3rd Addl. Registrar, City
Civil Court, Bombay ..Petitioner
versus
Smt. Kamal Maruti Dhotre & Ors. ..Respondents

Mr. C. Naidu i/b. Mr. Santosh Shetty for the
Respondents.

**CORAM : S. A. BOBDE, J.
DATE : 15TH OCTOBER, 2007.**

P.C.

. This is a Reference made by the 1st
Additional Principal Judge, City Civil Court,
Bombay, for punishing the respondents for contempt
of court. This court upon prima facie consideration
of the report, has taken cognizance and issued
notice for contempt against the Respondents.

2. In brief, the allegation against the
respondents is that they have violated the interim
order dated 17.8.2001 passed by the City Civil
Court, Mumbai, which reads as follows:-

"Pending the hearing and final disposal of
the N/M, defendants 2 to 5 their servants

and agents or anyone claiming through or under them are restrained from putting up any unauthorised construction or carrying out any unauthorised additions or alterations to the suit property and/or from encumbering, alienating, or parting with possession of the suit property in any manner whatsoever and/or from accepting surrender of tenancy or from creating new tenancy in respect of any portions of the suit property."

3. Upon a motion made by the original Plaintiffs - i.e. the respondents had committed breach of the Order by making certain additions and alterations in violation of the interim order, the City Civil Court, found that there was a prima facie case for Reference. The aspects which the City Civil Court took into consideration for determination whether there was a violation of its orders, were as follows:

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- "i) defendants raising the height of the suit premises;
 - ii) increasing the area of the premises;
 - iii) constructing roof of ladi koba placed on iron girders instead of Mangalore tiles; and
 - iv) constructing a bathroom in the second room after visit of the commissioner."

4. The City Civil Court, appointed a Commissioner and considered the Commissioner's

Report and on that basis made reference to this Court and on these basis found the respondents were prima facie guilty of violating the interim order of this court. It may be once seen that there is no clear evidence of the respondents having violated the order of the City Civil Court as regards the point Nos. (i) and (ii). Affidavit of the Plaintiffs nor the Commissioner's Report demonstrates that the respondents raised height of the suit premises and increased area of the premises. Indeed, this is highly improbable in view of the fact that the premises are a chawl. That apart, in any case, there is no clear evidence of such construction. Point No. (iii) i.e. construction of roof of ladi koba placed on iron girders instead of mangalore tiles, received attention of the learned City Civil Court. As regards this, it is clear that what the respondents were prohibited from doing by the City Civil Court was putting up any unauthorised construction or carrying out any unauthorised additions or alterations to the suit premises. It must therefore be seen whether the constructions they carried out or the alterations they have made were unauthorised. Mr. Naidu, learned counsel for the respondents

referred to authorisation or permission given by the Bombay Municipal Corporation on 18.2.2001 to the respondents. The Municipal Corporation has clearly stated that the following did not require any permission:-

- "(1) Replacing old broken mangalore tiled roof with new mangalore tiled roof or new A.C. sheet roof.
- (2) Repairs to the brick masonry walls.
- (3) Plastering to the broken doors and windows.
- (4) Repairs to the flooring etc.

The learned City Civil Court on the basis of the Commissioner's Report came to the conclusion that the alterations made by the Defendants are unauthorised. On a closer examination of the Commissioner's Report and the findings of the learned City Civil Court, it appears that respondents have placed A.C. sheets over the ladi coba. If this is so, it is difficult to see how the respondents can be found guilty of carrying out unauthorised repairs. The Municipal Corporation has itself permitted replacing the old mangalore tiled roof with either new mangalore tiled roof or a new A.C. sheet roof. Respondents appear to have replaced with A.C. sheet roof, which, in my view,

was permissible. Even if it is taken that the Respondents misconstrued the permission because of some ambiguity it cannot be said that there is any wilful breach of the order.

5. The other point that must be considered is whether the respondents have without permission erected a new door. Learned City Civil Court has observed from the Commissioner's Report that a new door carved circle at the top is fixed on the entrance. Relevant part of the Commissioner's Report reads as follows:-

"A new door carved circle at the top is fixed on the entrance. There are three steps newly constructed outside of this door."

It seems that the defendants have made a cement niche for the door. The report does not show that any door was fitted.

6. Having regard to this, it may be noted that the respondents have tendered an unconditional apology, which was rightly not accepted by the City Civil Court since the discretion to accept or not lies with this court. The apology appears to be bonafide and is hereby accepted. Having regard to

the circumstances, I consider it appropriate to discharge the suo moto notice. Order accordingly.

(S.A. BOBDE, J.)